IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

OP.No. 14126 of 2002(F)

PETITIONER:

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1. P.VIJAYARAJAN, S/O.K.NARAYANAN NAIR,
   AGED 49, NAGAMBALATH HOUSE,AKATHETHARA,
   PALAKKAD -8

2. P.VASU, S/O.PONNU AZHUTHACHAN, AGED 50
   KALATHIL HOUSE,THARUVAKURISSI,KANNADI,PALAKKAD.

3. T.M.RAMACHANDRAN, S/O.T.KUMARA MENON,
   AGED 49, KALLIANI NILAYAM,KANALMEDU,
   KONGAPPADAM,AKATHETHARA P.O.,PALAKKAD.

4. N.SIVADASAN,S/O.CHERUPPANGI ACHAN,
   AGED 41, NAGAMBALATH HOUSE,AKATHETHARA,PALAKKAD-8

5. P.GURUVAYURAPPAN S/O.P.KRISHNA MENON,
   AGED 56, NAGAMBALATH HOUSE, AKATHETHARA,
   PALAKKAD-8.

6. N.PREMKUMARAN, S/O.T.M.NARAYANAN NAIR,
   AGED 41, AMBIKA NILAYAM,SASTHA COLONY,
   MALAMPUZHA,PALAKKAD.

7. C.VIJAYAKUMARAN, S/O.C.CHAMUNNI,
   AGED 44, LAKSHMI NIAVS, ATHANI PARAMBUY,
   KALLEKULANGARA,PALAKKAD-9.

8. S.RAJENDRAN,S/O.K.S.SUBRAMANNIAN PILLA,
   AGED 37, SIVA NIVAS,KAVILPAD P.O.,PALAKKAD.

9. C.GOPALAKRISHNAN,
   S/O.E.P.SIVASANKARAN NAIR, AGED 41,
   KALLAMPARATTH HOUSE, KALLEKULANGARA P.O.,
   PALAKKAD.

10. K.K.UNNIKRISHNAN, S/O.T.GOPALAN NAIR,
    AGED 35, THEEHIYIL HOUSE, CHERUMGOTHU KAVE,
    AKATHETHARA P.O.,PALAKKAD.

BY ADV. SMT.AYSHA YOUSEFF
SMT.MOLLY JACOB
SRI.P.A.AZIZ

RESPONDENTS:
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1. RAILWAY BOARD, REP.BY ITS SECRETARY, MINISTRY OF RAILWAYS,NEW DELHI.

2. CHIEF PERSONNEL OFFICER,SOUTHERN RAILWAY,MADRAS.

3. THE GENERAL MANAGER,SOUTHERN RAILWAY, PALAKKAD.

4. SENIOR PERSONNEL OFFICER,SOUTHERN RAILWAY,PALAKKAD.

5. DIVISIONAL RAILWAY MANAGER,PALAKKAD.

6. PALAKKAD RAILWAY DIVISIONAL OFFICE STAFF CO-OPERATIVE CANTEEN LTD. NO.P956, PALAKKAD, REP.BY ITS SECRETARY.

R1 TO 5 BY SRI.M.C.CHERIAN,SR.SC.,RAILWAYS

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN C.M.P. NO.23726/2002 & I.A. NO.14540/2003 IN O.P. NO.14126/2002

DISMISSED:

19.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF REPLY TO REJOINDER AFFIDAVIT FILED BY SENIOR DIVISIONAL PERSONNEL OFFICER, PALAKKAD.

P2: PHOTOCOPY OF REGISTRATION CERTIFICATE SSUED BY REGISTRAR OF CO-OPERATIVE SOCIETY PALAKKAD WITH REG. NO.P.956.

P3: TRUE COPY OF BYE-LAW OF PALAKKAD RAILWAY DIVISIONAL OFFICE STAFF CO-OPERATIVE CANTEEN PALAKKAD.

P4: PHOTOCOPY OF LETTER DT.13.2.92 ISSUED BY R5 TO R2.

P5: TRUE COPY OF LETTER DT.16.11.93 BY R4 ADDRESSED TO R2.

P6: TRUE COPY OF LETTER DT.30.3.94 FROM THE HEADQUARTERS OFFICE TO THE SECRETARY RAILWAY BOARD.

P7: PHOTOCOPY OF LETTER DT.22.6.2001 ISSUED BY R1.

P8: PHOTOCOPY OF LETTER ISSUED BY R1 DT.18.9.2001.

P9: PHOTOCOPY OF REPRESENTATION SUBMITTED TO R1 BY PETITIONERS.

P10: TRUE COPY OF LETTER ISSUED BY R1 DT.17.4.2002.

P11: PHOTOCOPY OF RELEVANT PORTION OF THE INDIAN RAILWAY ESTABLISHMENT MANUAL VOL.II.

RESPONDENT'S EXHIBITS:

R2(1): TRUE COPY OF ORDER DT.19.7.2000 ISSUED BY THE RAILWAY BOARD.

R2(2): TRUE COPY OF LETTER DT.19.12.2001 ISSUED BY RAILWAY BOARD.

R2A: TRUE COPY OF MEMORANDUM DT.14.11.2003 ISSUED BY DIVISIONAL PERSONNEL OFFICE, SOUTHERN RAILWAY, PALAKKAD.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.14126 of 2002

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Dated this the 19th day of March, 2007.

JUDGMENT

The O.P. is filed for direction to the Railways to absorb the petitioners as Railway employees. Petitioners are admittedly employees in a canteen run for the Railway staff. Standing Counsel for Railways submitted that the canteens are given certain facility by Railways by providing space, accommodation to the canteen employees etc., so that food is made available to Railway employees at reasonable cost. Even though several canteen employees filed Writ Petitions before the Supreme Court for absorption as Railway employees, Supreme Court did not grant benefit to those similarly placed as petitioners. However, the contention of petitioners is that when Supreme Court decided the matter, the canteens run by the petitioners were not in the organised sector and eversince the judgment of the Supreme Court, society is formed by the canteen employees and canteens are run by such societies which are under the control of the authorities constituted under the Co-operative Societies Act in the State. I do not know on what basis petitioners can claim the benefit of railway employees, even if the canteen is run by societies registered under the Co-

operative Societies Act. Admittedly Railway has no control over the canteen societies which are free to run the society in the way they want subject to the Co-operative Societies Act and Rules. Facilities are obviously provided to the canteen and their employees by the Railway only as an incentive to run the canteen to reduce their cost so that food at reasonable cost is provided to the Railway employees. So long as Railways do not appoint canteen employees and do not exercise any supervisory powers over them and do not pay their wages, employees in the canteen cannot be treated as Railway employees, even though the customers in the canteen are Railway employees. In the circumstances, O.P. fails and is dismissed.

C.N.RAMACHANDRAN NAIR
Judge

pms